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IN THE

Supreme Court of the United States

ANTONIO RODRIGUEZ-ZAPATA,
Petitioner,

v.

ALBERTO R. GONZALES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Mexican American Legal Defense and Educational Fund (MALDEF) is the leading Latino legal organization in the United States focusing on litigation, advocacy, and educational outreach. MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 45 million Latinos living in the United States. Protecting the rights of immigrants is the focus of MALDEF's Immigrant's Rights Program. MALDEF monitors federal and state proposed legislation, submits comments on matters that affect the fair and equitable treatment of immigrants, and participates in litigation to further its mission.

SUMMARY OF ARGUMENT

As set forth in the Petition for Writ of Certiorari ("Petition"), the Courts of Appeals are fractured as to the proper role of reliance in determining whether applying a new law would result in an impermissibly retroactive effect. This Court should take this opportunity to resolve this deep division and clarify the role of reliance in retroactivity analysis.

Proof of reliance should not be required to support a determination that applying a new law would result in an impermissible retroactive effect. This Court's retroactivity jurisprudence does not require a showing of reliance as a prerequisite to a determination that applying a new law

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[1] Pursuant to Rule 37, a letter of consent from each party accompanies this filing. Pursuant to Rule 36, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus* and its counsel, made a monetary contribution to the preparation or submission of the brief.

would be impermissibly retroactive. *Amicus curiae* respectfully submits that this Court should grant the Petition to make clear that reliance is not required to conclude that application of a new law is impermissibly retroactive.

ARGUMENT

This Case Presents the Court With an Opportunity To Resolve the Circuit Split Regarding Whether Reliance Is Required To Conclude That a Law Is Impermissibly Retroactive.

This Court should take this opportunity to hold plainly that neither actual nor reasonable reliance is necessary to demonstrate that a law is impermissibly retroactive. This Court's retroactivity jurisprudence does not require a showing of reliance to support a determination that applying a new law would have an impermissible retroactive effect. Instead, reliance is simply an interest furthered by the presumption against retroactive application.

The Petition in this case ably demonstrates that the Court's decision in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), and its progeny including *Hughes Aircraft Co. v. United States, ex rel. Schumer*, 520 U.S. 939 (1997), *INS v. St. Cyr*, 533 U.S. 289 (2001), and *Fernandez-Vargas v. Gonzales*, 126 S. Ct. 2422 (2006) do not require a showing of reliance. Like the cases discussed in the Petition, the Court's decision in *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), provides no support for the Fifth Circuit's imposition of a reliance requirement. The Court in *Altmann* did acknowledge the reliance interest served by the traditional presumption against retroactivity: the "aim of the presumption [against retroactivity] is to avoid unnecessary *post hoc* changes to legal rules on which parties relied in

shaping their primary conduct." *Altmann*, 541 U.S. at 696. But reliance played no part in the Court's core articulation of the test for retroactivity:

> When, however, the statute contains no such express command the court must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Id. at 694 (quoting *Landgraf*, 511 U.S. at 280). "While in *Altmann* the Court reaffirms that the presumption against retroactivity serves reliance *interests*, it also confirms that reliance is not a *requirement* of retroactivity." *Olatunji v. Ashcroft*, 387 F.3d 383, 393-94 (4th Cir. 2004).

So too the Court's decision in *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994) provides no support for imposing a reliance requirement. The Court found the law at issue to be impermissibly retroactive because it "create[d] liabilities that had no legal existence before the Act was passed." *Id.* at 313. This was so even though there was some evidence in *Rivers* suggesting that the parties had not relied on the old law.

This Court's jurisprudence before *Landgraf* similarly does not support a reliance requirement. Indeed, the *Landgraf* Court itself set forth five different previous

articulations of the test for retroactivity. None of these tests refers to reliance, much less requires a showing of reliance:

- "A law is retrospective if it changes the legal consequences of acts completed before its effective date." *Landgraf*, 511 U.S. at 269 n.23 (quoting *Miller v. Florida*, 482 U.S. 423, 430 (1987) (internal quotation marks omitted));
- "[R]etroactive statute gives 'a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed.'" *Id.* (quoting *Union Pac. R.R. Co. v. Laramie Stock Yards Co.*, 231 U.S. 190, 199 (1913));
- "[A] retroactive statute is one that 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability.'" *Id.* (quoting *Sturges v. Carter*, 114 U.S. 511, 519 (1885));
- "[E]very statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective . . . ." *Id.* (referring to this definition from Justice Story's decision in *Soc'y for the Propagation of the Gospel v. Wheeler*, 22 F. Cas. 756 (CCNH 1814) as quoted in *Black's Law Dictionary* 1184 (5th ed. 1979)); and
- The terms "retroactive" and "retrospective" "'describe acts which operate on transactions which have occurred or rights and obligations which existed before passage of the act.'" *Id.*

(quoting N. Singer, *Sutherland on Statutory Construction* § 41.01 at 37 (5th rev. ed. 1993)).

Given the rampant confusion in the Courts of Appeals about the appropriate role of reliance in determining whether section 212 should be applied retroactively (*see* Petition at 10-16), this Court should grant review to provide guidance on this issue.

CONCLUSION

For these reasons, *amicus curiae* the Mexican American Legal Defense and Educational Fund respectfully requests that this Court grant the petition for writ of certiorari to make clear that reliance is not required to conclude that applying a new law would have an impermissible retroactive effect.

Respectfully submitted,

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